

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

CHRISTOPHER FOSTER,

Petitioner, : Case No. 1:15-cv-713

- vs -

District Judge Michael R. Barrett
Magistrate Judge Michael R. Merz

RONALD ERDOS, WARDEN,
Southern Ohio Correctional Facility,

Respondent.

REPORT AND RECOMMENDATIONS

This habeas corpus case is before the Court on Petitioner's Motion to Amend under Fed.R.Civ.P. 59(e) (ECF No. 123). In the Motion Foster purports to state a claim for release from custody under the First Step Act which he asserts applies retroactively to his case.

Final judgment was entered in this case on July 24, 2017 (ECF No. 82). Fed.R.Civ.P. 59(e) allows a motion to alter or amend a judgment to be made within thirty days after judgment is entered. Because the instant Motion was not filed¹ until January 18, 2019, it is grossly untimely and should be DENIED.

Purely as a matter of information, should Petitioner be tempted to find another vehicle to present this claim, the Magistrate Judge notes that the First Step Act applies only to federal prisoners.

¹ The date Foster apparently deposited the Motion in the prison mail system.

February 1, 2019.

s/ *Michael R. Merz*
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by mail. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 153-55 (1985).